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Seattle's New Wage Theft Ordinance Becomes Effective June 4, 2011

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Employment Law specialist, [Mike Brunet](#), details a growing trend and how it will impact the Seattle-area hospitality industry.

This week's topic may appear limited in scope, but is representative of a national and local trend. On April 25, 2011, the Seattle City Council unanimously passed an amendment to the City of Seattle's municipal code to define and punish "wage theft," the practice of improperly withholding amounts owed to employees. Seattle thus joins a growing number of jurisdictions, including Miami-Dade County, FL, and the cities of Austin, TX, Denver, CO, Kansas City, KS, and San Francisco, CA in having a specific law in place to combat wage theft. A number of legislators in cities, counties, and states around the nation are considering pending bills that would add to this list. Although the goals of Seattle's Wage Theft Ordinance may be laudable, the scope of the bill could cause well-meaning employers, including hoteliers and restaurateurs, to unintentionally run afoul of it.

Citing multiple reports to his office about employers intentionally withholding wages from workers in low-wage industries, Seattle Councilmember Tim Burgess sponsored the Wage Theft Ordinance in March 2011.

As many hospitality employers are already aware, before the Wage Theft Ordinance was passed there was already a robust set of Washington State wage laws and regulations that provide protection to employees in cases of improper wage deductions. Under the primary State regulation, aggrieved employees can sue their employers and individuals involved in making unlawful payroll decisions. If they are successful in their lawsuits, employees can recover double the amount of improperly-withheld wages as well as reasonable attorneys' fees.

In researching the problem of wage theft, Councilmember Burgess concluded that most low-wage workers cannot afford to privately pursue their employers for improper withholding of wages. Therefore, they must seek public assistance in enforcing their rights through the State Department of Labor and Industries, which the Councilmember found did not have the resources to actively collect lost wages for aggrieved workers. These findings were the motivation for creating a Wage Theft Ordinance apart from the existing statutes and regulations.

The Ordinance adds a new definition of "theft" to Seattle's criminal code. Under this new definition, a person is guilty of theft if he or she (1) secures the performance of services; (2) agrees to provide

compensation for the services; (3) the services are completed; and (4) the employer fails to make "full and complete payment"; (5) with the intent to avoid payment for services. Elements 1-3 are satisfied through virtually any employment relationship; an employer hires an employee (note that the law is not limited to traditional employer-employee relationships - independent contractors are definitely covered as well), agrees to compensation for the employee, and the employee performs work. The Wage Theft Ordinance does not define "full and complete payment," but the natural interpretation is that the employee must be paid every cent promised by the employer, or there is a violation of the fourth element of the law.

The fifth element of the new crime, regarding the employer's intent, is likely to be where most of the fights over this law arise. Intent is traditionally a difficult factor for prosecutors to prove in criminal matters. The Ordinance contains a number of non-exclusive considerations to use in determining whether an employer intended to avoid payment. These considerations include failing to make payment at the time when payment was promised, paying or offering a lesser amount than agreed upon, paying by a check that is not honored, taking any adverse action against a person in retaliation for asserting a claim to wages, or failing to respond within 15 days to a written communication making a demand for unpaid wages. Although the Ordinance makes clear that evidence of any of the above circumstances does not conclusively prove theft, many of them are still troubling. For example, a well-meaning employer could pay employees through bad checks due to an inadvertent accounting error. Or fail to timely respond to a frivolous demand for unpaid wages and nonetheless have that be considered evidence of bad intent.

Of particular importance to regional (but not necessarily Seattle-based) employers, the Wage Theft Ordinance potentially reaches far beyond Seattle. Because theft is deemed to occur where the agreement for services is made or where services occur, employers who hire employees in Seattle but have them work elsewhere, or vice versa, are nonetheless covered by the Ordinance.

Apart from the criminal penalties associated with theft, violation of the Wage Theft Ordinance also has significant business ramifications. The Ordinance permits the City of Seattle to revoke, refuse to issue, or refuse to renew a business license for at least one year if the applicant or licensee has been convicted of wage theft within the last 10 years.

Perhaps of more concern, the Ordinance makes the same penalties available to City officials if an employer fails to fully pay a citation or judgment based on a wage claim within a relatively short time after the citation or judgment become final. Due to the potential recovery of double damages and attorneys' fees, wage claim judgments can be large. We foresee situations where an employer is trying to pay off a citation or judgment, but cannot fully satisfy the assessment or judgment within the time period imposed by the Ordinance. In this situation, the City of Seattle nonetheless has the power to revoke the employer's business license. Revoking the license could remove the employer's ability to make the income necessary to pay off the judgment. Thankfully, an appeal process was added to the Ordinance between its first draft and the adopted bill.

Seattle's mayor, Mike McGinn, signed the wage theft ordinance on May 5, 2011. The ordinance becomes effective on June 4, 2011, 30 days after being signed by the Mayor.

You can review the [full text of the adopted ordinance here](#).

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